

HH

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

PUBLIC COPY



FILE [REDACTED] Office: SAN ANTONIO, TX

Date: AUG 27 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT: [REDACTED]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (I-212 application) was denied by the District Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 45-year old native and citizen of Australia. On September 27, 1995, the applicant was found to be inadmissible by an immigration judge and was ordered deported (removed). The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to live with his U.S. citizen wife and 18-year old U.S. citizen stepson.

The director determined that the applicant was inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(A)(ii) and 1182(a)(6)(C)(i), for having been ordered deported from the United States and re-entering within five years without the consent of the Attorney General and for having attempted to enter the United States by willfully misrepresenting a material fact. The director discussed the favorable and unfavorable factors in the applicant's case. The director then determined that the unfavorable factors outweighed the favorable factors. The I-212 application was denied accordingly.

On appeal, counsel asserts that the applicant inadvertently failed to procure permission to re-enter and that he last entered on a validly issued visa. Counsel further asserts that the Service, now known as the Bureau of Citizenship and Immigration Services (Bureau), failed to adequately balance the equities in this case. Counsel states that the applicant is married to a United States citizen who has never lived outside the United States and who could not live outside the United States because her children are attending school and one requires diabetes medication. Counsel states further that the applicant and his wife are buying their own home and if the applicant is denied reentry, they will suffer economic hardship and will lose their home to foreclosure. Counsel states that the applicant's wife lacks the skills to hold a good paying job.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9) states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

(i) Arriving aliens.-Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General has consented to the alien's reapplying for admission.

Approval of an I-212 application requires that the favorable aspects of an applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and

others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS*, 923 F.2d 72 (7th Cir. 1991), that less weight is given to equities acquired after a deportation (removal) order has been entered.

In review, counsel's arguments are not persuasive. Counsel argues that the applicant's wife would endure extreme hardship if the applicant were denied permission to re-enter the United States. The applicant failed to support these claims of hardship with documentation. Counsel states that the applicant's spouse has no skills to get a high paying job. This assertion is contradicted by the evidence on the record. The applicant wrote a letter to the Bureau stating that he attended his wife's graduation from medical school. The record contains a biographical data sheet that provides that the applicant's spouse worked as a medical assistant from June 1996 until July 1997.

In pointing out the favorable aspects of the case, the director stated that the applicant has a U.S. citizen wife, and that he has an approved petition for alien relative (I-130 application). The director's decision clearly reflects that he gave the above factors diminished weight due to the fact that the applicant's marriage took place in Australia in December 1995, after the applicant's October 25, 1995 deportation from the United States.

The director's decision additionally referred to the Regional Commissioner case, *Matter of Castaneda*, 14 I&N Dec. 387 (Regional Commissioner 1973) to support his position that family ties in the United States, by themselves, do not compel the favorable exercise of discretion for an I-212 application. Moreover, the director's decision also referred to *Jaimez-Revolla v. Bell*, 598 F.2d 243 (D.C. Cir., 1979) to support the contention that, despite the fact that an I-212 applicant is married to a U.S. citizen and is the beneficiary of a petition for alien relative, his I-212 application may be denied if the applicant has demonstrated a proven disregard for immigration laws.

The director's decision pointed out that in the *Jaimez-Revolla* case, the petitioner had violated U.S. immigration laws on at least two occasions and had committed a criminal offense as a result of these violations. The director's decision then demonstrated the present applicant's proven disregard for the laws of the United States by providing a discussion of his unfavorable criminal history and history of violation of immigration laws in the United States. The director noted that the applicant committed a felony by re-

entering the U.S. on April 10, 1996, without obtaining prior consent from the Attorney General to reapply for admission. The director further noted that on September 3, 1995, the applicant was arrested for assault in Mesa, Arizona and that he pled guilty to the assault charge and was sentenced to three years probation and twenty-five days in jail. The director states that on April 10, 1996, the applicant was admitted into the U.S. after he willfully misrepresented a material fact, i.e., he denied having any arrests or convictions.

This office finds that the director's decision did balance the favorable and unfavorable aspects of the applicant's case, and that the decision analyzed how the unfavorable factors outweighed the favorable factors in the case.

In addition, this office finds that for the reasons stated above, the unfavorable factors in the applicant's case outweigh the favorable factors.

In discretionary matters, the applicant bears the full burden of proving that he merits an exercise of discretion by the Secretary of Homeland Security ("Secretary"). See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant in this case has failed to establish that he warrants a favorable exercise of discretion.

ORDER: The appeal will be dismissed.